IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

WP(C).No. 24795 of 2006(B)

PETITIONER:

T.P.PRABHUTHAMAN,
MANAGER, S.N.D.P. HIGHER SECONDARY SCHOOL,
KUTTAMANGALAM, ALAPPUZHA DISTRICT.

BY ADV. SRI.T.A.SHAJI
SMT.T.V.NEEMA

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT EDUCATIONAL OFFICER,
KUTTANAD, ALAPPUZHA DISTRICT.

3. DIRECTOR OF PUBLIC INSTRUCTIONS,
KERALA, THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER, SRI. T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.24795/2006/B

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE MINUTES DATED 1-11-2005.

EXT. P2: COPY OF THE ORDER DATED 9-3-2006 OF THE 2ND RESPONDENT.

EXT. P3: COPY OF THE APPEAL MEMORANDUM DATED 22-3-2006 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT. P4: COPY OF THE JUDGMENT DATED 2-6-2006 IN W.P.(C) NO.13018/2006 OF THIS HON'BLE COURT.

EXT. P5: COPY OF THE WRITTEN SUBMISSION DATED 18.7.2006 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT. P6: COPY OF THE ORDER NO.ET2/21970/06/DPI/K.DIS DATED 17-8-06 ISSUED BY THE 3RD RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

JP

S.SIRI JAGAN, J.

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W.P.(C) No. 24795 of 2006

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Dated this the 10th day of December, 2007

JUDGMENT

The petitioner was elected as the new manager of the SNDP Higher Secondary School, Kuttamangalam, by the managing committee of the educational agency. However, by Ext.P2, the 2nd respondent refused to approve the petitioner as the manager of the school. Aggrieved by Ext.P2, petitioner filed Ext.P3 appeal. By Ext.P4 judgment of this Court Ext.P3 was directed to be disposed of within a time frame. By Ext.P6 order, Ext.P3 appeal was disposed of confirming Ext.P2 order again rejecting the petitioner's claim for approval as manager of the school. Petitioner therefore, seeks following reliefs:

"i. issue a writ of certiorari quashing the originals of Ext.P2 and P6;

ii. issue a writ of mandamus or any other appropriate writ, order or direction directing the 2nd respondent to grant approval to the change of Manager with effect from 1-11-2005 as requested in Ext.P1;

iii. issue such other writ, order or directions as this Hon'ble Court deems fit to be granted in the circumstances of the case including cost of the petitioner."

2. The contention of the petitioner is that approval has been declined only on the ground that one of the members of the managing committee is a teacher of the school and by virtue of Rule 8(1) of Chapter III of KER, that person is not eligible to be a member of managing committee. Therefore, according to the respondents 2 and 3 appointment of the petitioner as manager by a managing committee consisting of an ineligible member is not proper which according to the petitioner is erroneous. Petitioner would submit that the managing committee of the school consists of 11 members and the petitioner's appointment was unanimous and therefore, even assuming that one member is not eligible to be a managing committee member, petitioner's appointment as manager would not be vitiated. He would further submit that Rule 8 (1) of Chapter III of KER only stipulates that the Manager or member or or other office bearer of the managing body shall not be eligible for any appointment in that school.

3. Learned Government Pleader on the strength of the counter affidavit filed in this case supports the impugned orders. The Government Pleader has not been able to point out any provision in the KER whereby appointment of a manager by a

managing committee consisting of a member who is ineligible to be a managing committee member as per Rule 8 (1) of Chapter III of KER would become automatically ineligible to continue as manager of the school. According to me, in such a situation what the respondent can do is only to direct the educational agency to remove that person from the managing committee. Rule 8(1) only makes the manager or member or other office bearer of the body of a school ineligible for appointment in that school. Even assuming the converse can also be inferred that cannot ipso facto make decisions taken by the managing body with a teacher of the school as one of its members invalid. In this case out of 11 managing committee members only one attracts the disqualification in Rule 8(1) even assuming that there is such a disqualification. That being so, there is no reason to refuse approval of the appointment of the petitioner as manager made by 11 managing committee members unanimously. In the above circumstances, I am satisfied that petitioner is entitled to succeed in this writ petition. Accordingly, Exts. P2 and P6 orders are quashed and the 2nd respondent is directed to grant approval for change of manager with effect from 1.11.2005 as requested for in Ext.P1, if the same is otherwise in order. The orders in this

regard shall be passed within one month from the date of receipt of a copy of this judgment.

Writ petition is allowed as above.

S.SIRI JAGAN,
JUDGE

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